

1  
2  
3 \*E-FILED 8/7/07\*  
4  
5  
6  
7  
8

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

9 SUSANNE PALMER et al.,

NO. C 04 03026 RMW (RS)

10 Plaintiffs,

11 v.

12 PAUL R. STASSINOS,

13 Defendant.

14 RICHARD L. CARRIZOSA, et al.,

15 NO. C 05-2280 RMW (RS)

16 Plaintiffs,

17 v.

18 PAUL R. STASSINOS, et al.,

19 **ORDER GRANTING  
MONETARY SANCTIONS AND  
DENYING EVIDENTIARY  
SANCTIONS**

20 Defendants.

21 I. INTRODUCTION

22 Plaintiffs in these related actions seek evidentiary and monetary sanctions for the alleged  
23 failure of defendant Paul Stassinos to comply with prior orders compelling him to respond to certain  
24 discovery. The Court finds this matter suitable for disposition without oral argument, pursuant to  
25 Civil Local Rule 7-1. Because the record reflects what was, at a minimum, unacceptable inattention  
26 to compliance with court orders, monetary sanctions in the amount of \$5000 will be imposed.  
27 Further sanctions, however, are not warranted on the present record.

1 II. BACKGROUND<sup>1</sup>

2 Three prior Court Orders are pertinent to the present dispute:

3 A. Order entered August 18, 2006 in Palmer4 The Palmer plaintiffs moved to compel Stassinos to answer certain questions posed at his  
5 deposition that his counsel had refused to allow based on objections of attorney client privilege or  
6 work product protection. The Court ruled: “The motion to compel further deposition testimony is  
7 granted with respect to questions not answered on grounds of work product protection and denied  
8 with respect to the question not answered under a claim of attorney-client privilege.” August 18,  
9 2007 Order at 3:20-22. The Court set no particular time frame in which the deposition should  
10 resume.11 Plaintiffs contend that Stassinos has refused to appear for further deposition. Stassinos  
12 asserts that no further deposition has ever been noticed, and that he merely has suggested that other  
13 depositions take place first.

14

15 B. Order entered August 31, 2006 in Carrizosa16 Plaintiffs sought, among other things, to compel Stassinos to respond further to Document  
17 Requests Nos. 11-13, which sought documents related to Stassinos’s initial review of dishonored  
18 checks referred to him for collection. The Court ruled: “After this motion was filed, Stassinos  
19 served a supplemental response clarifying that no responsive documents exist. On reply, plaintiffs  
20 complain that the supplemental response is ambiguous as to whether Stassinos is limiting the  
21 response to the named plaintiffs.[¶] In light of the discussion above, Stassinos shall serve a further  
22 response clarifying that no responsive documents exist with respect to any check-writers, not just the  
23 named plaintiffs. If that is not the case, responsive documents related to other check-writers shall be  
24 produced.” August 31, 2006 Order at 4:24-3:2 (emphasis added).

25

26

27

---

28 <sup>1</sup> The general background of these actions has been described in prior orders and will not be repeated here.

1                   C. Order entered April 3, 2007 in Carrizosa

2                   On April 3, 2007, the Court entered the last (until now) of a series of orders addressing a  
3 dispute between the parties regarding the extent to which Stassinos would be required to review his  
4 files and to explain the basis of any decision not to pursue collection actions against check-writers  
5 other than the named plaintiffs. Based in part on Stassinos's letter brief as to what he believed could  
6 reasonably be accomplished, the Court ruled that:

7                   within 15 days of the date of this order, plaintiffs shall specify referral dates sufficient  
8 to total *approximately* 100 files for Stassinos to review. Within 30 days thereafter,  
9 Stassinos shall serve amended discovery responses identifying in which, if any of  
10 those approximately 100 files, no collection letters were sent as a result of his  
11 personal review of the returned checks. For any files so identified, Stassinos shall  
12 provide a complete verified answer to plaintiff's Interrogatory No.11 and shall  
13 produce the "check information report" in response to plaintiff's Document Request  
14 No. 14. At his option, Stassinos may redact any personal identifying information of  
15 the check writers shown on any such check information reports. With respect to any  
16 and all of the approximately 100 files in which collection letters were not sent out for  
17 some reason *other* than a decision made by Stassinos based on his review of the  
18 checks, he may simply state in a verified interrogatory response "collection not  
19 pursued for other reasons," and he need not produce the check information reports.

20                   April 3, 2007 Order at 3:18-4:2.

21                   Stassinos admits that his responses under this order became due on May 10, 2007. Stassinos  
22 admits that he did not serve responses until June 18, 2007, two days after the present motions were  
23 filed.<sup>2</sup>

## 24                   III. DISCUSSION

25                   A. Stassinos's Deposition

26                   The Court's order issued on August 18, 2006, nearly one year ago, unambiguously required  
27 Stassinos to appear for further deposition. The Court declines to wade into the parties' disputes as to  
28 the scheduling of that deposition before or after other depositions, none of which were previously  
presented to the Court nor which were expressly addressed in prior rulings. Plaintiffs may be correct  
that they need not have formally noticed the deposition to recover sanctions, given Stassinos's lack

---

27                   <sup>2</sup> Plaintiffs assert that even those responses were only "minimally compliant," and included  
28 "boilerplate" disclaimers and objections that have been rejected in prior court orders. Plaintiffs,  
however, represent that they will attempt to "clear up" any ambiguities in the responses through  
deposition, which appears to be the most efficient approach at this juncture.

1 of cooperation, but it is also true, at least technically, that Stassinos has not violated any express  
2 provisions of a Court order with respect to appearing for deposition.

3 These circumstances, standing alone, would not warrant the imposition of sanctions.  
4 Nevertheless, they can be considered, and have been considered, as additional support for the  
5 sanction award discussed below. As to the deposition itself, the Court hereby orders that Stassinos  
6 shall appear for further deposition in compliance with the order entered August 18, 2006, within 20  
7 days of the date of this order or at such other time as the parties may agree is appropriate.  
8

9       B. Further Responses to Document Requests Nos. 11-13

10 To explain his failure to comply with the Court's August 31, 2006 Order, Stassinos asserts  
11 that because he believed no responsive documents existed, no further response was necessary. That  
12 explanation rings hollow in light of the plain language of the order: "Stassinos shall serve a further  
13 response *clarifying that no responsive documents exist* with respect to any check-writers, not just the  
14 named plaintiffs." (Emphasis added). Even without the "emphasis added," it was incumbent on  
15 Stassinos's counsel to read and comply with the Court's order. Stassinos shall serve amended  
16 responses that comply with the August 31, 2006 Order within three court days of the date of this  
17 order.  
18

19       C. File Review

20 Stassinos argues that his failure to comply with his obligation under the April 3, 2007 order  
21 until two days *after* these motions were filed resulted from the amount of work involved and other  
22 obligations his counsel had to fulfill. Stassinos suggests that he would have served responses in the  
23 same time frame even if these motions had not been filed.

24       A party that serves responses *after* a motion to compel or a motion for sanctions has been  
25 filed stands on the thinnest of ice to the extent that it wishes to argue that the motion was not a  
26 necessary precursor to the responses being provided. Even assuming, however, that these responses  
27 would have been served on or about the same date had no motion been filed, Stassinos has not  
28 established that his failure to comply with a court order should be disregarded. The Court routinely

1 entertains applications for additional time based on contentions that either the scope of the work to  
2 be done was not anticipated, that counsel has other commitments, or both. Similarly, requests for  
3 extensions are often made and granted as part of a meet and confer process that is functioning as it  
4 should between professional members of the bar.

5 What is *not* routine, or acceptable, is a party unilaterally granting itself an extension of time,  
6 particularly in the face of an express court order. Absent exigent circumstances that preclude  
7 seeking a stipulation from opposing counsel or relief from the Court, doing so exposes a party to  
8 sanctions. Here, Stassinos has made no showing that he could not have sought an extension of time  
9 from plaintiffs or the Court. Accordingly, imposition of some form of sanctions is warranted.

10       D. Sanctions

11       District courts may impose sanctions as part of their inherent power “for willful disobedience  
12 of a court order.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991) (quoting *Alyeska Pipeline  
13 Service Co. v. Wilderness Society*, 421 U.S. 420, 258 (1975)). Sanctions are also specifically  
14 authorized under Rule 37 (b) (2) of the Federal Rules of Civil Procedure, which plaintiffs invoke  
15 here. That Rule provides, in relevant part:

16       If a party . . . fails to obey an order to provide or permit discovery . . . the court where  
17 the action is pending may issue further just orders. They may include the following:

18       (I) directing that the matters embraced in the order or other designated facts be taken  
19 as established for purposes of the action, as the prevailing party claims;  
20 (ii) prohibiting the disobedient party from supporting or opposing designated claims  
21 or defenses, or from introducing designated matters in evidence;  
22 (iii) striking pleadings in whole or in part;  
23 (iv) staying further proceedings until the order is obeyed;  
24 (v) dismissing the action or proceeding in whole or in part;  
25 (vi) rendering a default judgment against the disobedient party; or  
26 (vii) treating as contempt of court the failure to obey any order except an order to  
27 submit to a physical or mental examination . . . .

28       Instead of or in addition to the orders above, the court must order the disobedient  
29 party, the attorney advising that party, or both to pay the reasonable expenses,  
30 including attorney’s fees, caused by the failure, unless the failure was substantially  
31 justified or other circumstances make an award of expenses unjust.

32       When choosing among possible sanctions, the Court should consider a sanction designed to:

33 (1) penalize those whose conduct may be deemed to warrant such a sanction; (2) deter parties from  
34 engaging in the sanctioned conduct; (3) place the risk of an erroneous judgment on the party who

1 wrongfully created the risk; and (4) restore a prejudiced party to the same position he or she would  
2 have been in absent the wrongdoing. See *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427  
3 U.S. 639, 643 (1976); *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983); *West v.*  
4 *Goodyear Tire and Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999). In evaluating the propriety of  
5 sanctions, the Court may consider all incidents of prior misconduct, including prior misconduct that  
6 already has been subject to sanction. *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 947 (9th Cir. 1993).

7       1. Evidentiary Sanctions

8       As reflected in the discussion above, the Court, (1) does not condone the conduct of  
9 Stassinos in connection with the scheduling of a further deposition; (2) does not understand the  
10 assertion that he reasonably believed no further response to Document Requests Nos. 11-13 was  
11 required, despite the clear language of the August 31, 2006 Order to the contrary; and, (3) does not  
12 accept the proposition that his failure to comply with the April 3, 2007 order until after these  
13 motions were filed should be overlooked.

14       Nevertheless, it does not appear that any of this conduct has deprived plaintiffs of the ability  
15 to discover relevant evidence or otherwise caused prejudice *other* than the expenses they incurred in  
16 bringing these motions. The responsive information has now been provided, or will be provided  
17 presuming Stassinos complies with *this* order. Accordingly, the present record does not support  
18 imposing evidentiary sanctions.

19       2. Monetary Sanctions

20       Plaintiffs' motion for fees sought \$3,560, representing 8.9 hours incurred in bringing the  
21 motion, at \$400 per hour. On reply, plaintiffs assert a claim for a total of 27.3 hours (\$10,920 at  
22 \$400 per hour), excluding appearance at the hearing. The parties' briefing focuses on disputes as to  
23 whether \$400 per hour is a "reasonable rate" for plaintiffs' counsel to claim in actions brought under  
24 the Fair Debt Collection Practices Act ("the FDCPA"). That discussion is largely misdirected,  
25 however, because unlike in most of the cases cited in the briefing, the question is not what plaintiffs'  
26 counsel might be entitled to as a "reasonable fee" after *prevailing on the merits* in an FDCPA action,  
27 but what "reasonable expenses, including attorney's fees," plaintiffs incurred as a result of  
28 Stassinos's discovery misconduct. F. Rule Civ. P. 37 (b) (2). The degree of complexity to FDCPA

1 actions and the skill required to prosecute them is only tangentially relevant, at best. This was a  
2 discovery dispute— the underlying subject matter of the litigation could have been almost anything.

3 Under all of the circumstances here, \$5000 will be imposed as an appropriate monetary  
4 sanction, payable by Stassinos to plaintiffs within 30 days of the date of this order. That amount  
5 represents a sum sufficiently large to penalize and deter the sanctioned conduct and to reimburse  
6 plaintiffs for some portion of their expenses incurred in bringing this motion, without giving  
7 plaintiffs a windfall or creating undue financial hardship to Stassinos.<sup>3</sup>

8

9 **IV. CONCLUSION**

10 The motion for monetary sanctions is granted, in the amount of \$5000, payable by Stassinos  
11 to plaintiffs within 30 days of the date of this order. The motion for evidentiary sanctions is denied.  
12 Stassinos shall comply with the other provisions of this order set forth above.

13

14 **IT IS SO ORDERED.**

15 Dated: August 6, 2007



16 **RICHARD SEEBORG**  
United States Magistrate Judge

17

18

19

20

21

22

23

24

25

<sup>3</sup> In the event plaintiffs prevail in this action and are in a position to seek recovery of their attorney fees, this order should not be construed as a finding either that counsel's claimed hourly rate of \$400 is not reasonable or that counsel has expended more time than is appropriate. Rather, this ruling is limited to a finding that on the particular facts of *this* discovery dispute, the amount awarded is an appropriate sanction.

26

ORDER GRANTING MONETARY SANCTIONS AND DENYING EVIDENTIARY SANCTIONS  
C 04 03026 RMW (RS)

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

2 Paul Arons lopa@rockisland.com

3 O. Randolph Bragg rand@horwitzlaw.com, shannon@horwitzlaw.com

4 June D. Coleman jcoleman@ecplslaw.com, ckenobbie@ecplslaw.com

5 Mark Ewell Ellis mellis@ecplslaw.com, npruitt@ecplslaw.com, restrella@ecplslaw.com

6 Ronald Wilcox ronaldwilcox@post.harvard.edu

7

8 Counsel are responsible for distributing copies of this document to co-counsel who have not  
9 registered for e-filing under the Court's CM/ECF program.

10 **Dated: 8/7/07**

**Chambers of Judge Richard Seeborg**

11 By: /s/ BAK